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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 ADAM GOODMAN, et al.,

11 Plaintiffs,

12 v.

13 PLATINUM CONDOMINIUM
14 DEVELOPMENT, LLC, et al.,

15 Defendants.

Case No. 2:09-CV-00957-KJD-PAL

ORDER

16 Currently pending before the Court is Plaintiffs' Motion for Leave to File Third Amended
17 Complaint (#49). Defendants filed a Response in opposition (#50), to which Plaintiffs filed a Reply
18 (#52). Plaintiffs attach their proposed Third Amended Complaint, which seeks to add Marcus
19 Hotels, Inc. as a Defendant.

20 **I. Legal Standard**

21 Federal Rule of Civil Procedure 15(a)(2) provides that "a party may amend its pleading only
22 with the opposing party's written consent or the court's leave. The court should freely give leave
23 when justice so requires." Fed R. Civ. P. 15(a)(2). Whether an amendment to a pleading should be
24 permitted is ordinarily a matter within the discretion of the trial court. Caddy-Imler Creations, Inc. v.
25 Caddy, 299 F.2d 79, 84 (9th Cir. 1962). District courts are directed to apply this rule with "extreme

1 liberality." See, e.g., Forsyth v. Humana, Inc., 114 F.3d 1467, 1482 (9th Cir. 1997). However, leave
2 to amend is not absolute. Jackson v. Bank of Hawaii, 902 F.2d 1385, 1387 (9th Cir. 1990). Among
3 the factors mitigating against allowing parties to amend their pleadings are undue delay in litigation,
4 prejudice to the opposing party, and futility for lack of merit. Id. (citing Foman v. Davis, 371 U.S.
5 178, 182 (1962)). A showing of the factors overcomes the presumption in favor of granting leave to
6 amend. See Eminence Capital, LLC. v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

7 Upon consideration of the above factors, good cause appearing, the Court finds that
8 Plaintiffs' Motion should be granted. Additionally, because Defendants' Motion to Dismiss (#35) is
9 based on the allegations of the Second Amended Complaint, said Motion is denied as moot.

10 Accordingly, **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Leave to File Third
11 Amended Complaint (#49) is **GRANTED**.

12 **IT IS FURTHER ORDERED** that Defendants' Motion to Dismiss (#35) **DENIED** as moot.

13 DATED this 31st day of March 2011.

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Kent J. Dawson
United States District Judge